

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL - 5 1995

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Petition of the State of Ohio for
Authority to Continue to
Regulate Commercial Mobile
Radio Service

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) PR Docket No. 94-109
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)

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**OPPOSITION OF SPRINT CELLULAR COMPANY
TO THE PETITION FOR RECONSIDERATION
BY THE PUBLIC UTILITIES COMMISSION OF OHIO**

On June 19, 1995, The Public Utilities Commission of Ohio ("PUCO") filed a petition for reconsideration of the Commission's decision in the above-captioned matter.¹ For the reasons cited below, Sprint Cellular Company ("Sprint") urges the Commission to deny PUCO's petition.

BACKGROUND

In the above-referenced Report and Order, the Commission denied PUCO's petition to regulate the rates and entry of intrastate commercial mobile radio services ("CMRS") providers. This decision was based in part on a recognition, shared by Sprint and several other commenters, that PUCO had not met the statutory requirement to demonstrate that "market conditions ... fail to protect subscribers adequately from unjust and

1. In the Matter of Petition of the State of Ohio for Authority To Continue To Regulate Commercial Mobile Radio Services, PR Docket No. 94-109, Report and Order (May 19, 1995).

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unreasonable rates or rates that are unjustly or unreasonably discriminatory."² The Report and Order quoted language in an order adopted by PUCO itself that belies the necessity for state regulation of CMRS providers, i.e., "in an order adopted in October 1993, Ohio found 'a reasonable probability that [the OPUC's relaxation of cellular regulation] will not adversely affect consumers.'"³

While denying PUCO's authority over rate and entry regulation, the Report and Order reinforced PUCO's statutory authority to regulate other terms and conditions of CMRS. However, it noted that the record presented by PUCO's petition and related comments was not sufficiently developed to allow the Commission to draw a precise line between clearly preempted rate regulation and the full range of terms and conditions over which state regulation could be permitted.⁴

In the instant petition, PUCO asks the Commission to accept the results of the future adjudication of a complaint filed by Cellnet, pending since October 1993, as a supplement to said petition. PUCO asserts that its decision in the Cellnet complaint could provide a basis for drawing a line of demarcation between preempted and permitted CMRS regulation and justifies the Commission's postponement of a final decision in the matter until such time as the complaint is resolved.

2. 47 U.S.C. Sec. 332(c)(3)(A).

3. Report and Order at 38.

4. Id. at 42.

PUCO'S PETITION FOR RECONSIDERATION SHOULD BE DENIED

PUCO's Petition For Reconsideration should be denied because it provides no documentation to further define "other terms and conditions" over which regulation is permitted.

PUCO's request that the Commission accept as part of the record information that is possibly relevant, but is neither presently available nor its future date of availability known, should be rejected. The Commission has a statutory responsibility to issue a final decision by August 10, 1995.⁵ It cannot hold its decision in abeyance while PUCO struggles to resolve a nearly two-year-old complaint proceeding, particularly when the relevance of such resolution is unknown. Nor is it fair to hold in regulatory limbo CMRS providers who do business Ohio, as well as those newly licensed CMRS spectrum holders seeking to establish operations in the state.

The Commission's denial of PUCO's petition for CMRS rate and entry regulation was clear-cut. PUCO's instant petition provides nothing either to justify reconsideration of that determination or to form a basis for expanding the terms and conditions outlined in the Report and Order over which Ohio has clear jurisdiction.⁶ Accordingly, Sprint urges the Commission to deny said petition.

If and when the resolution of the Cellnet complaint produces evidence that PUCO deems relevant to a further


5. 47 U.S.C. Sec. 332(c)(3)(B).

6. Id. at 41, 43-44.

refinement of the "other terms and conditions" definition, PUCO should at that time submit such evidence to the Commission.

Respectfully submitted,

SPRINT CELLULAR COMPANY

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July 5, 1995

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 5th day of July, 1995, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Opposition of Sprint Cellular Company to the Petition for Reconsideration by the Public Utilities Commission of Ohio" in the Matter of Petition of the State of Ohio for Authority to Continue to Regulate Commercial Mobile Radio Service, PR Docket No. 94-109, filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.


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